

Session: TUE19

International crimes and international preventive mechanisms

Theme: Contemporary Criminology

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Presentation title: Mutual recognition in criminal matters in the EU: In search of the right fit

Based on the Tampere Council conclusions and The Hague Programme, the European Union has adopted over the last 10 years a significant number of legal instruments on judicial cooperation in criminal matters in the EU, many of which are centered around the principle of mutual recognition.

However, it has been shown that the new legal framework has not yet achieved its objectives and highlighted problems of legal transposition, practical application and consistency. The ongoing difficult negotiations on the European Investigation Order confirm that the mutual trust between Member States might not be as well-rooted as a pure application of mutual recognition requires.

In October 2009, the European Commission launched a call for tender for a “Study on the future institutional and legal framework of judicial cooperation in criminal matters in the EU”. The study, which is currently in its final phase, aims at reviewing the entirety of European cooperation in criminal matters, in order to obtain an independent view as a basis for a long-term strategic policy plan.

This presentation will show why and to what extent the EU is in need of a helicopter-view, removing to a large extent the traditional boundaries between the judicial and law enforcement authorities and the numerous inconsistencies in which the organic and ad hoc development of stand-alone legal cooperation instruments has led.

Further, without resorting to an instrument-specific analysis, the presentation will deal with correction mechanisms which (should) apply to the principle of mutual recognition. Central themes are the application of the *lex mitior* principle and the search for the right fit between national criminal justice systems and European integration in the field of cooperation in criminal matters. Now that the window of opportunity created after 9/11 is slowly closing, there is a pressing need for examining if and to what extent further common minimum procedural guarantees and the development of an EU criminal justice ‘Esperanto’ could serve as the necessary flanking measures to back up the Member States ‘blind’ recognition of each other’s national decisions in criminal matters.